

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BENNIE BARNES,)	
Petitioner,)	Civil Action No. 13-253 Erie
)	
v.)	Chief District Court Judge Joy Flowers Conti
)	Magistrate Judge Susan Paradise Baxter
SUPERINTENDENT GIROUX, <u>et al.</u>,)	
Respondents.)	

MEMORANDUM ORDER

On or around August 15, 2013, state prisoner Bennie Barnes (“Barnes”) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges the November 1, 1999, judgment of sentence imposed upon him by the Court of Common Pleas of Erie County. The case was referred to a United States Magistrate Judge in accordance with 28 U.S.C. § 636(b) and Local Rule 72.

On August 28, 2013, the magistrate judge issued a Report and Recommendation [ECF No. 5], in which she advised that the petition must be summarily dismissed without service pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. The magistrate judge explained that the court lacks jurisdiction over this case because the petition is an unauthorized successive petition. 28 U.S.C. § 2244(b). See, e.g., Burton v. Stewart, 549 U.S. 147 (2007).

On September 23, 2013, Barnes filed objections to the Report and Recommendation. [ECF No. 6]. He urges the Court to consider the merits of his claims, but does not address the magistrate judge's advisement that the petition must be dismissed for lack of jurisdiction because it is an unauthorized successive one.

Accordingly, after de novo review of the documents Barnes filed in this case, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 30th day of September, 2013;

IT IS HEREBY ORDERED that the petition is summarily DISMISSED without service and a certificate of appealability is DENIED;

The Report and Recommendation [ECF No. 5] of Magistrate Judge Susan Paradise Baxter, filed on August 28, 2013, is adopted as the opinion of the Court.

/s/ Joy Flowers Conti
Chief United States District Court Judge

cc: Susan Paradise Baxter, U.S. Magistrate Judge

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